RETHANA M. RAJASIGAMONEY

v.

THE GOVERNMENT OF MALAYSIA

FEDERAL COURT, KUALA LUMPUR
MOHD. AZMI FJ
[CIVIL APPLICATION NO. 2 OF 1984]
20 MARCH 1984

CONSTITUTIONAL LAW: *Application for leave to commence proceedings in Federal Court - Whether application proper - Suit regarding validity of certain provisions of Employees' Social Security Act 1969 - Whether Federal Court had exclusive original jurisdiction - Federal Constitution, Articles 4(4), 128(1)(a).*

The applicant applied by notice of motion for leave under Article 4(4) of the Federal Constitution to commence proceedings in the Federal Court against the Government of Malaysia for a declaration that certain sections of and the schedules to the Employees' Social Security Act (the Act) were inconsistent with various provisions of the Constitution and further for a declaration that the Act was void to the extent of such inconsistencies.

Held:
The application was misconceived. The subject matter of the Act was covered by item (15) of the Federal List, and the proceedings intended to be initiated were one in which the Federal Court had no exclusive original jurisdiction within the ambit of Article 128(1)(a) and could not be litigated in the Federal Court in the first instance. The intended suit was within the original jurisdiction of the High Court and as such the provision of Article 4(4) regarding leave to commence proceedings in the Federal Court did not arise.

[Application dismissed.]

Cases referred to:
Syarikat Banita Sdn. Bhd. v. Government of State of Sabah [1977] 2 MLJ 217
East Union (M) Sdn. Bhd. v. The Government of the State of Johore and the Government of Malaysia [1980] 2 MLJ 143
Stephen Kalong Ningkan v. Tun Haji Abang Openg & Tawi Sli (No.2) [1967] 1 MLJ 46
Yeoh Tat Thong v. Government of Malaysia & Anor. [1973] 2 MLJ
Ah Thian v. Government of Malaysia [1976] 2 MLJ 112

For the applicant - Karam Singh Veriah; M/s. Karam Singh Veriah & Co.
For the respondent - Datuk Abu Mansor Ali; SFC

Legislation referred to:
Courts of Judicature Act 1964, ss. 45, 47
Employees' Social Security Act 1969, ss. 31, 42, 43, 58, 84, 87

JUDGMENT

Mohd. Azmi FJ:

On 12 November 1981, the right hand of Miss Rethana aged 18 years was caught in a cutting machine whilst working at the plywood factory of Weng Meng Industrial Sdn. Bhd. at Puchong, Selangor. As a result of the accident, she lost her thumb and three fingers which is indeed a tragedy for a young girl of her age. Under the provisions of the Employees' Social Security Act, 1969, she belongs to a class of employees who are insured against such

accidents, and accordingly she has been awarded under the Act a benefit of RM1.50 per day giving her a sum of about RM1,026 over a period of two years. She refuses to accept the award contending that it is unconstitutional in that if she had not been barred by the Act to sue her employer for negligence in a Court of Law, she would expect the Court to award her damages in the region of RM74,000 based on current awards given by the Courts for similar injuries. Through her father and next friend Mr. M. Rajasigamoney, she applies to me as a Federal Judge by notice of motion for leave under Article 4(4) of the Federal Constitution to commence proceedings in the Federal Court against the Government of Malaysia for a declaration that ss. 31, 42, 43, 58, 84 and 87 of the Employees' Social Security Act and also the schedules to the said Act are inconsistent with various provisions of the Constitution, and further for a declaration that the said Act of Parliament is void to the extent of such inconsistencies.

The main issue for determination is whether such proceedings must be commenced in the Federal Court as a Court of first instance so as to require her to obtain leave of a Judge of the Federal Court as provided by Article 4(4) of the Constitution. Article 4(1) provides that, "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". It thus contains an important declaration of a principle. Clauses (2) and (3) of Article 4 then provide the scope and extent of the right to challenge the validity of any law passed by Parliament or the Legislature of any State; whilst Clause (4) which must be read together with Article 128(1)(a) provides the forum where it can be challenged. It would be instructive to reproduce the relevant porvisions of Article 4(3) and 4(4) and as well as Article 128(1) (a), in so far as laws enacted by Parliament are concerned, in disputes other than between the Federation and one or more States. They are as follows:

Article 4(3)	The validity of any law made by Parliament ... shall not be questioned on the ground that it makes provision with respect to any **matter** with respect to which Parliament ... has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground ...
Article 4(4)	Proceedings for a declaration that a law is invalid on the grounds mentioned in cl. (3) ... shall not be commenced without the leave of a Judge of the Federal Court; ...
Article 128(1)(a)	The Federal Court shall, to the exclusion of any other court; have jurisdiction to determine in accordance with any rules of court regulating the exercise of such jurisdiction any question whether a law made by Parliament ... is invalid on the ground that it makes provision with respect to a **matter** with respect to which Parliament... has no power to make laws; ... (Emphasis is mine)

The word "matter" in Articles 4(3) and 128(1)(a) came up for determination before Suffian L.P. in the case of *Syarikat Banita Sdn. Bhd. v. Government of State of Sabah* [1977] 2 MLJ 217 @ 218. He dealt with it in the following words:

> In the light of *Stephen Kalong Ningkan v. Tun Haji Abang Openg & Tawi Sli (No. 2)* [1967] 1 MLJ 46, *Yeoh Tat Thong v. Government of Malaysia & Anor*. [1973] 2 MLJ 86, and *Ah Thian v. Government of Malaysia* [1976] 2 MLJ 112, I agreed with the learned State Attorney-General of Sabah that the word "matter" in Clause (3) of Article 4 has the same meaning as the word "matters" in Clause 2) of the Article 74, that as the impugned subsection deals with a state subject, i.e., a matter with respect to which the Sabah legislature has power to make law, the proposed challenge to the validity of the new subsection does not come within Clause (4) of Article 4 or Clause (1)(a) of Article 128.

> The validity of the new subsection is to be challenged not on the ground that it deals with a matter with respect to which the Sabah legislature has no power to make law (on the contrary, as already stated, it was conceded that it deals with a matter within the competence of that legislature). It is to be challenged on the ground that it is contrary to several provisions of the constitution. The fact, if such be it, that it is so contrary does not mean that it deals with a matter with respect to which the State legislature has no power to make law.

Later in 1980, Suffian LP had another opportunity to consider the same point in *East Union (M) Sdn. Bhd. v. The Government of the State of Johore and the Government of Malaysia* [1980] 2 MLJ 143. There the learned Lord President distinguished the case from *Syarikat Banita (ante)* in that in the earlier case which dealt with a new sub-section 24(7) of the Sabah Forest Enactment "the contention was that the impugned law was contrary to the Constitution"; whereas in *East Union* which concerned the validity of s. 100 of the National Land Code "the contention here being that Parliament exceeded the power given to it by Article 76(4) when it enacted the section. In other words, the contention is that Parliament did not have power to enact it." With great respect, I entirely agree with the judgments of the learned Lord President in both the cases. Under our Constitution, the Federal Court is an appellate Court and its exclusive original jurisdiction is limited. In my opinion, this particular original jurisdiction of the Federal Court conferred by Article 128(1)(a) read with s. 45 of the Courts of Judicature Act 1964 should be strictly construed and confined to cases where the validity of any law passed by Parliament or any State Legislature is being challenged on the ground that Parliament has legislated on a matter outside the Federal List or Concurrent List; or a State Legislature has enacted a law concerning a matter outside the State List or the Concurrent List as contained in the ninth Schedule to the Federal Constitution. To extend the exclusive original jurisdiction of the Federal Court to matters which are not expressly provided by the Constitution would apart from anything else, deprive aggrieved litigants of their right of appeal to the highest Court in the land.

In the present case the Employees' Social Security Act 1969 is being challenged not on the basis that Parliament has no power to enact it, but on the ground that some of its provisions are inconsistent with certain provisions of the Constitution. Being a social legislation involving matters pertaining to labour and social security, there can be no argument that the subject matter of the Act is covered by item (15) of the Federal List, and as such the proceedings intended to be initiated against the Government of Malaysia is one in which the Federal Court has no exclusive original jurisdiction within the ambit of Article 128(1)(a). Consequently, the intended suit should not be litigated in the Federal Court in the first instance. Since the intended suit is within the original jurisdiction of the High Court, the provision of Article 4(4) regarding leave to commence proceedings in the Federal Court does not arise. I accordingly rule that the present application for leave is misconceived. By virtue of s. 47 of the Courts of Judicature Act 1964, I make no order as to costs.

Also found at [1984] 1 CLJ 352